

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.81 OF 2006

IN

SUIT NO.253 OF 2005

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Anshul Agencies ...Plaintiff

v/s.

J.L.Morison (India) Ltd.

and ors. ...Defendants

...

Mr.R.Fernandes for the Plaintiff.

Mr.Vikas Mahangre for the Defendant No.1.

Mr.S.A.Shetty for the Defendant No.2.

Mr.S.H.Patel for Defendant No.3.

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CORAM: D.K.DESHMUKH, J.

DATED: 19TH JUNE, 2006

P.C. :

The Plaintiff has filed this suit against the Defendant No.1 on the premise that the Plaintiff by delivering the goods to the Defendant No.3 the transporter, the Defendant No.1 becomes owner of the goods and is liable to pay price of the goods. This premise is not well founded. Perusal of the letter of the Plaintiff at Exh.D shows that the Plaintiff was supposed to accept the goods. In other words, the Plaintiff had an option to reject the goods. Therefore, this would substantiate that the Defendant No.1 will not become the owner of the goods on the Plaintiff's delivering goods to the transporter. The receipt of the transporter clearly states that during the transportation the goods are at the risk of the owner. As during the transportation the owner of the goods appears to be the Plaintiff, it will be at his own risk. The defence put up by the Defendant, therefore, cannot be said to be merely a moon shine or without any substance. In my opinion, therefore, the Defendant is entitled to leave to defend the suit. Summons for judgment is disposed of.

Defendants are granted unconditional leave to defend the suit. Written statement to be filed within a period of eight weeks from today. Suit be transferred to commercial cause list.

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